IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3815 OF 2005

Somnath Sahebrao Borge. ... Applicant.

Versus.

State of Maharashtra. ... Respondent.

Shri Kuldeep S.Patil i/by Shri Deepak Girme for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 5th July, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The offence alleged against the Applicant and others is under section 302, 201 read with section 34 of the Indian Penal Code. The Application for bail made by the Applicant and co-accused has been rejected by the learned Sessions Judge. The learned Sessions Judge held that the statements of atleast two witnesses show that the deceased was last seen together with the Applicant and the co-accused Vishwanath. The learned Judge referred to the recovery at the instance of the Applicant.

2. The F.I.R. is filed by one Khandu Shivaji Adsul on 21st October 2004. The F.I.R. is against unknown

persons. On 25th October 2004, the Applicant was arrested. It appears that on 27th October 2004 statements of two witnesses Balbahadur and Vishnu were recorded in which they have stated that they had seen the deceased together with the Applicant and the co-accused Vishwanath on 19th October 2004 at about 8.30 a.m. The said witnesses stated in the said statement that they saw that subsequently only the Applicant and co-accused Vishwanath came back and the co-accused Vishwanath was having blood stains on his clothes and there were blood stains on his hand. These statements of the witnesses who have stated that the Applicant, co-accused and the deceased were last seen together have been recorded after two days of the arrest of the Applicant. It is pertinent to note that the said two witnesses have stated that the co-accused was wearing blood stained clothes. The witness Vishnu has stated that he has seen the Applicant after he was arrested. It is pertinent to note that the witnesses have not stated about blood stains on the clothes or on the hands of the Applicant.

3. Thus according to the prosecution case, only after the Applicant was arrested, two days thereafter the said two witnesses came forward and stated that they had seen the Applicant, co-accused and the deceased together just before the deceased disappeared. It is not the case of the prosecution that prior to the arrest of the

Applicatn any witness had stated about the involvement of the Applicant.

4. In the circumstances, a case is made out for enlarging the Applicant on bail. Nothing is placed on record to show that the Applicant had criminal antecedent or that he is likely to abscond. The Applicant is in custody from 25th October 2004.

5. In the circumstances, the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.94 of 2004 of Hinjvadi Police Station, Dist.Pune, subject to furnishing a personal bond of Rs.15,000/- with one or two sureties in like amount.

(ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by

the Applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

(vi) The parties to act upon an authenticated copy of this order.

Judge.